*** HON'BLE SRI JUSTICE P.S. NARAYANA**

+WRIT PETITION NO.18051 of 2006

%25-09-2006

K.Pavan Raj. .. PETITIONER

versus

#The Municipal Corporation of Hyderabad,
represented by its Commissioner,
Tank Bund, Hyderabad and another. .. RESPONDENTS

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> HEAD NOTE:

! Standing **Counsel for petitioner: Sri M.Ravindranath Reddy**

^ **Counsel for Respondents: Smt. G.Jyothi Kiran.**

? Cases referred

1. 2006(5) ALD 295.
2. 2006(2) L.S. 330.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.18051 of 2006

DATED 25.09.2006

Between:
K.Pavan Raj. .. PETITIONER

versus

The Municipal Corporation of Hyderabad,

represented by its Commissioner,
Tank Bund, Hyderabad and another. .. RESPONDENTS

WRIT PETITION NO.18051 of 2006

ORDER:

Heard the learned counsel.

2. The Writ Petition is filed for a Writ of Mandamus declaring the action of the respondents in insisting on production of No Objection Certificate (NOC) from the Committee constituted by the Government for this purpose for receiving the application in Form Appendix-A under Section 428 of Municipal Corporation Act read with Bye-Law No.3.2 of the Municipal Corporation Building Bye-Laws, 1981 submitted by the petitioner to erect a building in premises bearing D.No.12-7-107/3/2/B, Malkajgiri New, Mettuguda, Secunderabad, as arbitrary, illegal and contrary to the law laid down by this Court and consequently direct the respondents to receive the said building application of the petitioner and grant building permission without insisting No Objection Certificate (NOC) from the Committee constituted by the Government for the said purpose and pass such other suitable orders.

3. It is stated that one Abdul Aziz Khan was the pattadar of various extents of agricultural lands bearing S.Nos.784 and 786 of Malkajgiri and S.Nos.192, 198, 102 and 227 of Lalaguda village. After the death of said Abzul Aziz Khan, the said property devolved on his legal heirs Mohiuddin Khan and others. It is also stated that during the life time of late Mohiuddin Khan, the office of the Special Deputy Collector, Land Acquisition, Hyderabad District has acquired part of the land i.e., an extent of 33 acres 33 guntas from the said .Nos.784 and 786 of Malkajgiri for the construction of Railway Staff quarters. Thereafter the said legal heirs developed the remaining land in the said S.Nos.784 and 786 of Malkajgiri into various plots and sold some of them to different purchasers. The father of the petitioner purchased one such

plot of 6660 sq. yards along with house therein bearing municipal No.12-7-103/3/2/B (old) in said S.Nos.786/1 to 4 for a valid consideration under registered sale deed bearing document No.164/85 dated 19.1.1985 and the possession of the property was also delivered to the father of the petitioner and since then they have been in peaceful possession and enjoyment of the land in question. It I also stated that in the year 1982, the railway authorities tried to encroach upon the land in question without any lawful authority. Then the father of the petitioner was constrained to file a suit in OS.No.17 of 1992 on the file of the Court of I Assistant Judge, City Civil Court, Secunderabad for injunction against the South Central Railway, restraining it and its men from interfering with their possession and enjoyment. The General Manager, South Central Railway filed written statement opposing the said relief. The trial Court, vide judgment dated 3.12.1996, though found that they are in possession and enjoyment of the property and that the defendants therein have no title, dismissed the said suit holding that the suit for injunction is not maintainable without declaration of title. It is also further stated that aggrieved by the said decree and judgment, the father of the petitioner filed A.S.No.2 of 1997 on the file of the I Additional Chief Judge, City Civil Court and the same was also dismissed, vide judgment dated 16.10.2000 even after holding that the defendants therein failed to produce any document to show their title except Exs.B1 to B3, which are extracts of Town Survey Records and those exhibits do not establish their title. It is also stated that aggrieved by the said decree and judgment, the father of the petitioner filed Second Appeal No.108 of 2001 before this Court and this after careful consideration of the entire evidence on record, decreed the suit vide judgment dated 5..2005. During the pendency of the Second Appeal, the father of the petitioner died and himself and his mother came on record as his legal representatives. It is also further stated that thereafter on 14.12.2005,

the railway authorities issued notice under Section 4 of the Public Premises (Eviction of Unauthorised Occupants), 1971. Since the said notice of the railway authorities itself is one without jurisdiction, the petitioner filed W.P.No.27566 of 2005, questioning the said notice dated 14.12.2005. Along with the said Writ Petition, the petitioner also filed WPMP.No.35404 of 2005 requesting this Court to suspend the operation of the said notice dated 14.12.2005, pending disposal of the Writ Petition and this Court was pleased to admit the Writ Petition and suspend the operation of the said notice by orders dated 27.12.2005. It is also stated that thereafter in order to construct building in the premises in question, the petitioner enquired in the office of the 1st respondent that the documents required to be submitted for making an application for constructing a building. Then the officers of the 1st respondent have furnished the petitioner a printed format, in which the details of the documents required to be furnished along with application in Appendix-A and from the perusal of the said printed format, a candidate is required to submit 27 documents i.e., (1) sale deed, (2) site plan, (3) building plan, (4) service plan, (5) general specifications and (6) No Objection Certificate (NOC) from the Joint Collector, Hyderabad, etc. In these circumstances, the petitioner made an application dated 25.2.2006 to the Joint Collector, Hyderabad for issuing No Objection Certificate in respect of the said plot bearing premises No.12-7-107/3/2/B, Malkajgiri New, Mettuguda, Secunderabad for obtaining permission from the Municipal Corporation for construction of house/apartments, but the Joint Collector, Hyderabad issued an endorsement dated 9.6.2006 thereby rejecting his representation for grant of No Objection Certificate solely on the ground that the land in question is classified as Government land belonging to C.G.Railway in Town Survey Land Record. It is also further stated that thereafter on seeking legal advice, the petitioner was

advised that the respondent-Corporation is not entitled to insist on production of No Objection Certificate for granting building permission and he was advised to submit an application in Appendix-A as prescribed in Bye-Law No.3.2 of Municipal Corporation Building Bye-Laws, 1981 read with Sections 428 and 429 of Hyderabad Municipal Corporation Act, 1955 and in pursuance of the said advice, he approached the 2nd respondent on 24.8.2006 with building application form in Appendix-A enclosing all the required documents as prescribed in the application, but the 2nd respondent refused to receive the said application on the ground that No Objection Certificate (NOC) obtained from the Joint Collector, Hyderabad, is not enclosed to the application. The said action of the respondents in insisting the petitioner to produce No Objection Certificate from the Joint Collector, Hyderabad, is arbitrary, illegal and contrary to law laid down by this Court. It is also stated that even as per the application prescribed by the respondents-Corporation, under Bye-Law No.3.2 of the Municipal Corporation Building Bye-Laws, 1981, the applicant need to enclose four documents viz., (1) site plan, (2) building plan, (3) service plan and (4) general specifications. Therefore, the action of the respondents in refusing to receive his application on the ground that he had not enclosed the No Objection Certificate issued by the Joint Collector, Hyderabad is contrary to the Act and Rules. Several other factual details also had been narrated in paragraphs 12 to 16 of the affidavit filed in support of the Writ Petition.

4. The learned counsel for the petitioner had placed strong reliance on the under noted decisions in K.MANEMMA vs. MUNICIPAL CORPORATION OF HYDERABAD AND ANOTHER[1]; DR.G.ANANDA KUMAR REDDY AND ANOTHER vs. THE MUNICIPAL CORPORATION OF HYDERABAD AND ANOTHER[2] and judgments of this Court in Writ Petition No.17622 of 2005, dated

10.8.2005, Writ Petition No.12831 of 2005, dated 17.6.2005 and Writ Petition No.15373 of 2004, dated 7.8.2004, and laid further emphasis on the judgment of this Court in K.MANEMMA's case (1 supra). The learned Standing Counsel representing the respondents placed strong reliance on the decision of this Court in Writ Petition No.18104 of 2006, dated 1.10.2006 and would submit that the respondent-Corporation is not insisting on the production of No Objection Certificate, but is concerned only with TSLR entries.

5. This Court in K.MANEMMA's case (1 supra) at paragraph 6 observed as hereunder:

> "In the light of the same, refusal to receive or entertain the application merely on the ground of TSLR entries may not be sustainable in the event of the applicant being able to satisfy the ownership, title and legal possession in relation to the property in question".

6. In Writ Petition No.18104 of 2006 no doubt this Court referred to Bye-Law No.4.2 dealing with the application for the building permit and had specifically referred to 4.2(5) dealing with the ownership, title etc. In the light of the decisions referred to supra, this Court is of the considered opinion that the action of the respondent-Corporation in insisting on production of No Objection Certificate cannot be sustained and hence, the respondents are hereby directed to receive the building application of the petitioner in relation to the subject matter of the Writ Petition without insisting on No Objection Certificate from the revenue authorities and further consider the other documents which may be placed along with the application relating to the title and possession and dispose of the same in accordance with law in the light of the decisions referred to supra.

7. The Writ Petition is allowed to the extent indicated above. There shall be no order as to costs.

25.09.2006

SSR

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[1] 2006(5) ALD 295.

[2] 2006(2) L.S. 330.